IN THE

Supreme Court of the United States

October Term, 1972 No. 72-459

GRACE SLOAN, as State Treasurer of the Commonwealth of Pennsylvania

and

JOSE DIAZ and ENILDA DIAZ, His Wife, WILLIAM ZIMMERSPITZ and NANCY ZIMMERSPITZ, His Wife, F. CARL KRETZMAN and KATHERYN L. KRETZMAN, His Wife, ARTHUR HARVEY and MURIEL HARVEY, His Wife, DANIEL F. X. POWELL and ANNA T. POWELL, His Wife, SETH W. WATSON, JR., and ANNE P. WATSON, His Wife, and HENRY E. CROUTER,

Petitioners

v.

ALTON J. LEMON, NEAL F. BRACKEN and BENJAMIN S. LOWENSTEIN,

Respondents

MOTION TO DISMISS OR AFFIRM

On Appeal from The United States District Court for the Eastern District of Pennsylvania

Pursuant to Rule 16 of the Rules of this Court, the appellees herein move to dismiss the appeal or to affirm the judgment of the Court below on the ground that the ques-

tions upon which review is sought have been rendered so insubstantial by the well-reasoned opinion of the District Court and by this Court's decision in *Wolman v. Essex*, 342 F. Supp. 399 (E. D. Ohio), *aff'd* — U.S. —, U.S. Law Week —, (1972) that no further review by this Court is necessary.

QUESTIONS PRESENTED

The basic questions presented by this appeal are whether the Pennsylvania Parent Reimbursement Act for Nonpublic E[illegible]on violates the Establishment Clause of the First Amendment to the Constitution of the United States and whether the denial of benefits to parents under that Act is a denial of equal protection under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

COUNTER-STATEMENT OF THE CASE

Act 94 of 1971 provides that the state shall make payments to any parent who had paid tuition, for the already completed school year, for the education of a child in a nonpublic school. The payments are tuition in that they are made to reimburse parents for tuition already paid and are intended to support both religious and secular education at these schools. The state has not taken any steps to preclude the use of its funds to support religious activities.

The appellees accept, to the extent not restated in the above paragraph, the remainder of the Statement of the Case as set forth by the appellants in their Jurisdictional Statement, on pages 4-8.

BLEED THROUGH POOR COPY

ARGUMENT

There is nothing we can add to the excellent opinion of Chief District Judge Joseph S. Lord III, except to note that on October 10, 1972, this Court held that a substantially identical case did not present a substantial federal question in *Wolman v. Essex*, 342 F. Supp. 399 (S. D. Ohio), *aff'd.* — U.S. — (1972).

CONCLUSION

The judgment of the District Court should be affirmed because its decision has rendered insubstantial the questions which the appellants ask this Court to review.

Respectfully submitted

THEODORE R. MANN
1845 Walnut Street
Philadelphia, Pa. 19103

LEO PFEFFER
15 East 84th Street
New York, N. Y. 10028
Attorneys for Appellees

October, 1972

CERTIFICATE OF SERVICE

THEODORE R. MANN, ESQUIRE, hereby certifies that copies of the within Motion to Dismiss or Affirm were mailed, postage prepaid, on October 13, 1972 to counsel for appellants at the following addresses:

The Honorable J. Shane Creamer
Attorney General
Commonwealth of Pennsylvania
Harrisburg, Pa.

Henry T. Reath, Esq.
Duane, Morris & Hechscher
1617 Land Title Building
Phila., Pa. 19110

James E. Gallagher, Jr., Esq.
C. Clark Hodgson, Jr., Esq.
1300 Two Girard Plaza
Phila., Pa. 19102

William B. Ball, Esq.
Joseph G. Skelly
Ball & Skelly
127 State Street
Harrisburg, Pa. 17101

THEODORE R. MANN

Theodore R. Mann

BLEED THROUGH POOR COPY